

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In re:

Request of Cellular Communications of  
Puerto Rico, Inc. to Hold an Auction  
To License Cellular RSA No. 727A,  
Ceiba, Puerto Rico

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RM-8897

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS ON PETITION FOR DECLARATORY RULING OR,  
IN THE ALTERNATIVE, FOR RULEMAKING

COMMITTEE TO PRESERVE  
LOTTERY SELECTION

Stephen Diaz Gavin  
Paul C. Besozzi  
J. Jeffrey Craven  
Janet Fitzpatrick  
Jeffrey L. Ross  
PATTON BOGGS L.L.P.  
2250 M Street, N.W.  
Washington, D.C. 20037  
(202) 457-6000

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## SUMMARY

The plain language of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") indicates that the Federal Communications Commission ("FCC" or "Commission") must relottery the Rural Service Area ("RSA") Licenses and may not retroactively change the mechanism to award the remaining RSA cellular licenses (the "RSA Licenses") to auction. The statute provides a clear exception to holding an auction when applications for licenses are filed before July 26, 1993, and all of the outstanding RSA applications were filed prior to this date.

Similarly, the legislative history of the Budget Act demonstrates that Congress did not intend the auction provisions to apply retroactively. The Commission has previously found that outstanding applications for "unserved" areas should be awarded by relottery and not by auction. The Commission based its findings on considerations of equity, efficiency, and administrative cost, all of which apply with even greater force in the context of RSA Licenses. RSA License applicants filed their applications six to seven years ago. Their applications were delayed because other applicants were disqualified and the Commission suspended the lottery process. RSA License applicants spent considerable time and resources preparing their applications and have had their applications tied-up as they wait for action by the Commission. The Commission already determined that lotteries take less time than auctions. Thus, efficiency considerations favor proceeding with a relottery. The Commission would incur substantial administrative costs to refund the application processing fees of RSA applicants who do not wish to participate in an auction and to process new applications for applicants who wish to participate in an auction. Applicants for the initial RSA Licenses face disadvantages in participating in an auction because

they developed their business plans and financing arrangements to cover the costs associated with a lottery, not an auction.

Retroactive application of statutes and rules is disfavored. In order to apply a statute or rule retroactively, Congress must expressly designate its intention to apply the statute or rule in this manner. Neither the Budget Act nor its legislative history provide such an express grant. In fact, the Budget Act specifically states the exact opposite by instructing the Commission to conduct a lottery for licenses filed by July 26, 1993. Furthermore, the Administrative Procedure Act may preclude the retroactive application of rules by defining a "rule" as having only a future effect. The Commission has determined that RSA applications remain pending until the Commission grants a license and that if an application selectee cannot accept a license, the Commission will hold another lottery to select an application from the remaining pool.

It would be unfair for the Commission to award the RSA Licenses by auction rather than lottery. The party filing the petition for rulemaking, Cellular Communications of Puerto Rico, Inc., holds an interim operating authority license for the Puerto Rico 5 RSA. It does not have an application on file to participate in the lottery for permanent authorization for the Puerto Rico 5 RSA, so it is now trying to change the rules to obtain a result it could not achieve by following the regulatory procedures relied upon by all applicants for RSA Licenses. Finally, auctioning the remaining RSA Licenses will not enable them to realize their full value because potential bidders will be unable to value the licenses accurately due to the cloud of litigation surrounding their initial award.

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**COMMENTS ON PETITION FOR DECLARATORY RULING OR,  
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The Committee to Preserve Lottery Selection<sup>1/</sup>, by its attorneys, hereby opposes any switch midstream from lotteries to auctions to license certain cellular rural service areas ("RSAs"), for which pending applications were filed more than seven years ago.

**INTRODUCTION**

Section 309(j) of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") grants the Commission the authority to use competitive bidding procedures to select among mutually exclusive applications for licenses to use the electromagnetic spectrum.<sup>2/</sup> One major

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<sup>1/</sup> The Committee consists of applicants who have applications pending in some or all the RSA markets in which initial licensing has not been completed, including the six markets which were set for lottery on September 18, 1996, only to have the lottery canceled by the Commission. *See* Exhibit 1 hereto for a complete list of the Committee's membership.

<sup>2/</sup> 47 U.S.C. § 309(j) (1996).

exception to the use of auctions, known as the "Special Rule," instructs the Commission not to use auctions to award licenses if the applications were filed on or before July 26, 1993.<sup>3/</sup> Applying this exception, the Commission has already employed lotteries to issue cellular "unserved" licenses for which applications were filed prior to July 26, 1993.<sup>4/</sup>

On July 12, 1996, the Commission's Wireless Telecommunications Bureau (the "Bureau") issued a Public Notice announcing that the Bureau would conduct a relottery on September 18, 1996, for six RSA markets in which the applicants filed applications prior to July 26, 1993, but for which the original lottery winners had been disqualified.<sup>5/</sup> In accordance with licensing procedures in place at the time the applicants filed their applications, the Commission determined that it would license the RSAs by random selection rather than competitive bidding.<sup>6/</sup> However, on September 9, 1996, Cellular Communications of Puerto Rico, Inc. ("CCPR") filed a "Petition for Declaratory Ruling or Rulemaking" (the "Petition") requesting that the Commission hold an auction to license one of the RSAs, Ceiba, Puerto Rico. In response, the Commission suddenly canceled the lottery, decided to treat CCPR's petition as a petition for rulemaking and invited comments on whether to award RSA cellular market licenses by

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<sup>3/</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(e), 107 Stat. 382 (1993) ("*Budget Act*").

<sup>4/</sup> Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7387 (1994) ("*Unserved Areas Order*").

<sup>5/</sup> *Lottery Notice*, FCC to Hold Domestic Public Cellular Telecommunications Service Lottery for RSA Markets in Which Previous Winner was Defective, Mimeo No. 63896 (July 12, 1996) ("*Lottery Notice*").

<sup>6/</sup> *Lottery Notice* at 1.

competitive bidding in all cellular markets in which applicants filed their applications prior to July 26, 1993 and the original lottery winner had been disqualified (the "RSA Licenses").<sup>7/</sup>

The plain language of the auction statute, its legislative history, fundamental principles of administrative law and considerations of equity and fairness compel the Commission to continue to award the RSA Licenses by lottery, rather than switching to an auction at this late date -- more than 7 years after the Committee members and others filed their RSA License applications. For these reasons, and as further outlined below, the Committee to Preserve Lottery Selection respectfully requests that the Commission deny the Petition and promptly conduct a new lottery for the RSA Licenses.

## **ARGUMENT**

### **I. The Plain Language Of The Statute Suggests That The Commission Should License The RSA's By Lottery.**

Section 6002(e) of the Budget Act reads in pertinent part:

(e) SPECIAL RULE -- The Federal Communications Commission shall not issue any license or permit pursuant to section 309(i) of the Communications Act of 1934 (47 U.S.C. 309(i)) after the date of enactment of this Act unless --

...

(2) one or more applications for such license were accepted for filing by the Commission before July 26, 1993.<sup>8/</sup>

Thus, this section of the Budget Act, the so-called "Special Rule," requires that the Commission "shall not" issue any licenses by lottery "unless," the applications to participate in the lottery

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<sup>7/</sup> *Public Notice, Cellular Communications of Puerto Rico, Inc. Petition for Declaratory Ruling or Rulemaking to Determine Whether Competitive Bidding Procedures Should Be Used to License Certain Cellular Rural Service Areas, DA 96-1685, (October 24, 1996).*

<sup>8/</sup> *Budget Act § 6002(e).*

were filed<sup>9/</sup> prior to July 26, 1993.<sup>10/</sup> The language of this second clause clearly provides an exception to the prohibition on selection by lottery presented in the body of the provision. The exception does not employ permissive language, such as "the Commission may . . . ." It simply states that the prohibition on awarding licenses by lottery does not apply if the applications were filed prior to July 26, 1993. All of the applicants for the RSA Licenses filed their applications long before July 26, 1993 and entered into the initial lotteries prior to these deadlines -- indeed, all such applications were filed at least four years earlier; in some cases more than five years earlier. Accordingly all of the applicants fall within the exception providing for the use of lotteries and the Commission should use this form of selection to award the RSA Licenses.

## **II. Congress Did Not Intend The Commission To Apply The Auction Provisions Retroactively.**

The legislative history of the Budget Act and the Special Rule demonstrates that Congress did not intend the Commission to apply the auction provisions retroactively. Prior Commission determinations, Congress' inclusion of a lottery grandfather provision, Congressional reports, and settled law indicate that Congress did not intend the auction provisions to apply retroactively.

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<sup>9/</sup> The legislative history of the Budget Act indicates that by using the term "accepted for filing" Congress intended to exempt from auction any application filed before July 26, 1993. All RSA applications that had been originally accepted for lottery were "accepted for filing" within the meaning of The Budget Act. As Senator Inouye, the sponsor of the Senate bill, stated:

I would like to clarify the use of the term "accepted for filing." For the purposes of this Act, accepted for filing is not meant in the usual technical sense, but *means in this case that an application was actually timely filed before July 26, 1993*, for a service that can be awarded by lottery under existing law. Thus, under the legislation, the FCC may use a lottery to award any license for which applications were filed prior to July 26, 1993. 139 Cong. Rec. S16535 (daily ed. November 19, 1993) (statement of Sen. Inouye) (emphasis added).

<sup>10/</sup> *Budget Act* § 6002 (e).



**A. The Commission's Reliance On The Legislative History Of The Act To Find That Lotteries Should Be Used For "Unserved" Area Applications Indicates That The Commission Should Use Lotteries To Issue RSA Licenses.**

Previously, the Commission determined that certain "unserved" area licenses should be awarded by lottery.<sup>11/</sup> In reaching this decision, the Commission relied upon the legislative history of the Budget Act to find the existence of "grandfathering provisions for applications on file with the Commission before July 26, 1993."<sup>12/</sup> The Commission stressed that Congress found "considerations of equity, administrative cost and efficiency" sufficient to justify using lotteries for applicants who relied on the then-existing lottery procedures and filed before July 26, 1993.<sup>13/</sup>

The same considerations of legislative intent that the Commission found convincing in the "unserved" area context apply with even greater force in the context of the RSA Licenses. The Commission there expressed concern that many of the unserved area applications had already been on file for more than a year.<sup>14/</sup> Time considerations favor continued use of lotteries even more for RSA License applicants, who filed their applications in 1988 and 1989, six to seven years ago.

In addition, considerations of equity and efficiency favor issuing these licenses as expeditiously as possible. The RSA License applicants expended considerable time and resources in preparing and filing their applications. Due to events beyond their control, the RSA

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<sup>11/</sup> *Unserved Areas Order* ¶ 2.

<sup>12/</sup> *Id.* ¶ 13.

<sup>13/</sup> *Id.*

<sup>14/</sup> *Id.* ¶ 14.

License applicants have been deprived of final action on their RSA applications, tied up simply because other applicants were disqualified and the Commission delayed in continuing the lottery process.<sup>15/</sup> As a result, RSA License applicants have had their investment tied-up for years, as they waited in good faith reliance upon the Commission to proceed as promised to issue the RSA Licenses by lottery.

Arguments premised on administrative cost and efficiency also compel continued use of the lottery licensing mechanism. Indeed, as the Commission previously concluded, "[i]t has been estimated that it may take 60 days or longer to complete an auction than to complete a lottery,"<sup>16/</sup> which might be an overly optimistic assessment of the delays caused by such a switch. In the context of unserved area licenses for which applications were filed prior to July 26, 1993, the Commission determined that not all applicants would want to participate in an auction and those that did not should be entitled to a refund of their application processing fees.<sup>17/</sup> Similarly, RSA License applicants might not want to participate in an auction and the Commission would have to refund their application fees. The Commission would incur substantial direct costs in refunding application fees, as well as the investment of additional staff resources necessary for the processing new applications for participation in the auction.

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<sup>15/</sup> For example, the denial of the application of the tentative selectee in the Ceiba, Puerto Rico RSA became final in May 1993. *See Algreg Cellular Engineering*, 8 FCC Rcd 2236 (Rev. Bd. 1993) (application dismissed for failure to file exceptions to adverse Initial Decision). However, the Commission delayed more than three years before issuing a new lottery notice. Indeed, the delay begs the question of whether the Commission was not trying to "warehouse" spectrum for any future auction opportunity, something specifically disfavored by the Budget Act. *See* § 6002 (a) of the Budget Act, 47 U.S.C. § 309(j)(7)(B).

<sup>16/</sup> *Id.* ¶ 16.

<sup>17/</sup> *Id.* ¶ 14.

Applicants for initial RSA licenses would be disadvantaged in an auction environment, because they had long ago formulated business plans that reflect the costs associated with a lottery, not an auction. The RSA License applicants would have to be allowed the opportunity to amend their business plans, conform to bidding rules, restructure financing arrangements, and raise additional funds to participate in the bidding process. Such steps would entail additional months of delay.

**B. The Legislative History Of The Budget Act Indicates That The Special Rule Was Adopted Specifically To Permit The Use Of Lotteries For Applications Accepted Before July 26, 1993.**

In discussing the clause in the Special Rule instructing the Commission to use lotteries for applications filed before July 26, 1993, the conference report specifically states that the Commission may conduct lotteries for nine Interactive Video Data Service markets and "several other licenses."<sup>18/</sup> Additional legislative history indicates that Congress considered cellular licenses to be included in the "several other licenses" described in the conference report and, therefore, in turn intended cellular licenses for which applications had been filed by July 26, 1993 to be issued by lottery.<sup>19/</sup>

**C. Absent An Express Grant To Apply Auction Authority Retroactively, The Commission Must Apply The Special Rule And Issue The RSA Licenses By Lottery.**

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<sup>18/</sup> H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess 498 (1993).

<sup>19/</sup> Senator Gorton, a member of the Senate Committee with oversight responsibility for the Commission, expressed concerns about imposing a competitive bidding process on applications for which the Commission had already begun the licensing process. He specifically focused on cellular licenses stating: "[i]n some cases, applications have been filed but the FCC has not acted upon them such as is the case with some *cellular licenses*. *These issues will need to be addressed in conference.*" 139 Cong. Rec. S7950 (daily ed. June 24, 1993) (statement of Sen. Gorton) (emphasis added). In the conference report printed five weeks later, it is apparent the conferees addressed Senator Gorton's specific concern and added the language "several other licenses" to ensure that cellular licenses would fall within the exemption in the Special Rule.

The Supreme Court has repeatedly found the retroactive application of statutes to be disfavored.<sup>20/</sup> Even where retroactive statutes have withstood judicial scrutiny, they have been held to a higher rationality standard than other statutes.<sup>21/</sup> As a result of these restraints upon retroactive lawmaking, " . . . congressional enactments and administrative rules will not be construed to have retroactive effect unless their language *requires* this result."<sup>22/</sup> The Special Rule does not "require" the Commission to impose retroactively a requirement to use auctions to award the RSA Licenses. To the contrary, the language of the Special Rule indicates that the

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<sup>20/</sup> With some of its strongest rhetoric, the Court has decided that statutes should not be applied retroactively. For example, in *Landgraf v. USI Film Products*, 511 U.S. 244, 114 S.Ct. 1483, 1497 (1994), Justice Stevens found that:

. . . the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under that law that existed when the conduct took place has timeless and universal appeal." In a free, dynamic society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions.

*Id.* (citations omitted). See also *Rivers v. Roadway Express, Inc.*, 114 S.Ct. 1510 (1994) (sections of Civil Rights Act of 1991 not to apply retroactively); *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988) (stating "[r]etroactivity is not favored under the law.")

<sup>21/</sup> See *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984) ("retroactive legislation does have to meet a burden not faced by legislation that has only future effects."); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17 (1976) (Congress may not be able to legislate retroactively that which it could legislate prospectively because of due process considerations.)

<sup>22/</sup> *Bowen*, 488 U.S. at 208 (emphasis added); see also *Landgraf*, 114 S.Ct. at 1498, 1501 (finding " . . . a requirement that Congress first make its intention clear helps ensure that Congress itself has determined that the benefits of retroactivity outweigh the potential for disruption or unfairness" and "[r]equiring clear intent assures that Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.")

Budget Act's auction provisions should not be applied retroactively and that the exemption in the Special Rule should be used to preclude retroactive application of the auction provisions.

The Court has imposed even greater restraints upon the promulgation of retroactive rules by administrative agencies. It has found that " . . . a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in *express terms*" and "[e]ven where some substantial justification for retroactive rulemaking is presented, courts should be reluctant to find such authority absent an *express statutory grant*." <sup>23/</sup> Neither the provisions of Section 309(j) of the Budget Act establishing auction procedures, nor the provisions in the Special Rule, "expressly" grant the Commission the authority to conduct an auction for the RSA Licenses. In fact, the exact opposite is true. The Special Rule "expressly" provides for the Commission to conduct a lottery for licenses filed by July 26, 1993.

Furthermore, it appears that the legal framework governing administrative law may specifically preclude the retroactive application of rules. The Administrative Procedure Act ("APA")<sup>24/</sup> defines a rule as having only a future effect.<sup>25/</sup> The very distinction between rulemaking and adjudication is that the former involves forward-reaching policymaking, while the latter involves resolving present and past individual grievances.<sup>26/</sup> Therefore, it appears that

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<sup>23/</sup> *Id.* (emphasis added).

<sup>24/</sup> 5 U.S.C. §§ 551-552, 553-559, 701-706, 1305, 3105, 3344, 5372, 7521.

<sup>25/</sup> The APA defines rule in part as: " . . . the whole or part of an agency statement of general or particular applicability and *future effect* designed to implement, interpret, or prescribe law or policy . . . ." 5 U.S.C. § 551(4) (emphasis added).

<sup>26/</sup> *See also Bowen*, 488 U.S. at 221 (Scalia, J., concurring) ( "Adjudication *deals* with what the law was; rulemaking deals with what the law will be.")

any retroactive change of established policies to substitute auctions for lotteries to award RSA Licenses through administrative rulemaking may violate the APA.

The Commission's own Public Notices indicate that all RSA applications remain pending until the Commission ultimately grants a license. In fact, the Commission has already addressed the situation in which a license cannot be granted, deciding that "[i]n the event that the application selected cannot be granted, *another lottery will be held* for that market and another application will be selected from the remaining applications."<sup>27/</sup> In RSA markets in which the selectee was not disqualified, the Commission did not dismiss the mutually exclusive RSA applications until it granted construction permits.<sup>28/</sup> This demonstrates that the pending RSA applications are part of an ongoing FCC licensing process that must not be disrupted by applying the Budget Act's auction rules retroactively.

When members of the Committee filed their RSA applications in 1988 and 1989, there was no thought to use competitive bidding for the selection of licenses; the Commission had no such authority. Thus, if the Commission were to change to auctions, applicants could be confronted with new and unexpected obligations including new Commission filing fees and

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<sup>27/</sup> *Public Notice, FCC to Hold Nonwireline Domestic Public Cellular Telecommunications Service Lottery for North Carolina & Puerto Rico* Wednesday, September 20, 1989, Mimeo No. 302121 (July 20, 1989) (emphasis added). The Commission included similar language in its July 12, 1996 lottery notice. *See also Vivian E. Warner*, 6 FCC Rcd 6033 (1991) (applications are dismissed only after authorization grant). Thus, it is plainly incorrect for CCPR to argue that the RSA License applicants have had their one chance to be selected and lost. (Petition, p. 5).

<sup>28/</sup> *See, e.g., Public Notice, Common Carrier Public Mobile Services Information, Construction Permit Granted to Nonwireline Cellular Applicants in RSA Markets* 318, 342, 553, 555, 641, 716, 717 and 719, Report No. CL-89-240 (August 4, 1989).

bidding related payments.<sup>29/</sup> This amounts to that which Justice Scalia characterized as "secondary retroactivity", *i.e.*, "altering future regulation in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule. . . ."<sup>30/</sup>

**D. The Fact That Congress Included This Legislative Exception At All And Designated It A "Special Rule" Suggests That It Is An Exception To Be Used In The Circumstances Described.**

While it is arguable whether the auction provisions would have withstood judicial scrutiny if Congress had not included the Special Rule and had applied the provisions retroactively, it does not concern the present controversy. As evidenced by the legislative history discussed above, Congress specifically added the Special Rule so that the Commission would not apply the auction provisions retroactively. The very fact that Congress chose to refer to the provision as a "special" one reflects Congressional intent that the Commission apply the exemptions when circumstances satisfied the criteria in the Special Rule, namely, the cases when applicants filed their applications prior to July 26, 1993.

**III. Prudential Considerations Of Equity And Fairness Favor Licensing The RSAs By Lottery Rather Than By Auction.**

As noted earlier, CCPR holds an "interim operating authority" ("IOA") license for the Puerto Rico 5 RSA. Based on the September 18, 1996 lottery list, CCPR does not have an application on file to participate in the lottery for the permanent authorization for Puerto Rico 5 RSA. The Commission has refused to grant interim operating authorizations to any party with a pending application for permanent authorization because "such a grant would inevitably tend to

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<sup>29/</sup> *Contrast, Maxcell Telecom Plus, Inc. v. F.C.C.*, 815 F.2d 1551, 1555 (D.C. Cir. 1987), where the D.C. Circuit found the absence of such liabilities allowed the switch to lotteries from comparative hearings where applications were filed after the lottery statute had been adopted.

<sup>30/</sup> *Id.*, 488 U.S. at 220 (Scalia, J., concurring).

influence the Commission in its ultimate decision."<sup>31/</sup> In this case, CCPR missed its opportunity to file an application to compete for the Puerto Rico 5 license. In a fit of regulatory "sour grapes," CCPR now wants the opportunity to buy its way around the rules. It would be grossly unfair to the 491 lottery applicants for the Puerto Rico 5 RSA for the Commission to permit CCPR to do so. If the Commission decides to auction the Puerto Rico 5 license, it would violate the *Community Broadcasting* standard, as well as accepted notions of equity and fairness, by allowing undue influence from an interim operator.<sup>32/</sup>

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<sup>31/</sup> See *Beloit Broadcasters, Inc. v. F.C.C.*, 365 F.2d 962 (1966) (citing *Community Broadcasting Co. v. F.C.C.*, 274 F.2d 753 (1960)).

<sup>32/</sup> The Commission recognizes that dictates of equity and fairness are components of reasoned decision making. See *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*. 6 FCC Rcd 4736, 4746 ( 34) (1991).

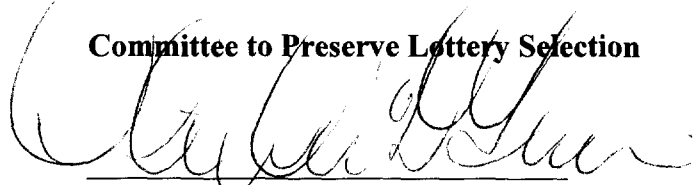


## **CONCLUSION**

The Commission should act expeditiously to dismiss CCPR's petition for rulemaking and instead follow its existing procedures relied upon by the RSA License and award the RSA Licenses by lottery. This comports with Congressional intent as expressed in The Budget Act and is consistent with principles of equity and administrative efficiency. Had the Commission followed its established procedures to issue the licenses, it would likely already have new selectees for the RSA markets. Instead, there is further delay in reaching the final licensing decision. For the foregoing reasons, the Committee to Preserve Lottery Selection respectfully urges the Commission to award the licenses through relottery, rather than beginning a new rulemaking to implement auction procedures.

Respectfully submitted,

**Committee to Preserve Lottery Selection**



Stephen Diaz Gavin  
Paul C. Besozzi  
J. Jeffrey Craven  
Janet Fitzpatrick  
Jeffrey L. Ross  
PATTON BOGGS L.L.P.  
2250 M Street, N.W.  
Washington, D.C. 20037  
(202) 457-6000

Its Counsel

November 25, 1996

## **EXHIBIT 1**

### **Membership Of Committee To Preserve Lottery Selection**

Vanguard Cellular Systems, Inc.  
Cell-Ventures, Ltd.  
Ruth H. Steele  
Reliance Corporation  
Ten Woodland Road Corporation  
Michael B. Azeez  
James E. Martin, Jr.  
Airways Communications, Inc.  
Islands Cellular Partnership  
Bay-Cell, Ltd.  
Dacourt Communications, Inc.  
Aztec Cellular Partnership

## CERTIFICATE OF SERVICE

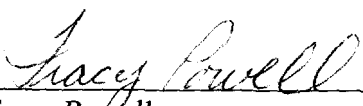
I, Tracy Powell, hereby certify that a copy of the foregoing "Comments to Cellular Communications of Puerto Rico's, Inc. Petition for Declaratory Ruling Or, In the Alternative, For Rulemaking" was served by messenger on the following:

ITS  
2100 M Street, N.W.  
Room 140  
Washington, D.C. 20554

Eric J. Bash \*  
Federal Communications Commission  
Wireless Telecommunications Bureau  
Commercial Wireless Division  
Legal Branch  
2025 M Street, N.W.  
Room 7130  
Washington, D.C. 20554

Cellular Communications of Puerto Rico, Inc.  
c/o Charles D. Ferris  
Sara F. Seldman  
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo  
701 Pennsylvania Avenue, N.W.  
Suite 900  
Washington, DC 20004

Hand Delivered \*

  
Tracy Powell